90-188
(2)

Supreme Court, U.S.
FILED
JUL 30 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

International Consulting Services, Inc.
Petitioner

vs.

Richard K. Gilbert, Esquire
Respondent

Petition for Writ of Certiorari

To the United States Court of Appeals
For the District of Columbia Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNITED STATE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1989

No. 89-7170 C.A. No. 88-00104

International Consulting Services, Inc.,

v. Appellant

Richard K. Gilbert, Esquire

BEFORE: Ruth B.Ginsburg, Williams and Sentelle, Circuit Judges

ORDER

Upon consideration of appellant's motion for summary reversal, the response thereto, and the reply, and appellee's motion for summary affirmance and to award Rule 38 sanctions, and the response thereto, it is

ORDERED that the motion for summary reversal be denied. It is:

FURTHER ORDERED that the motion for summary affirmance be granted substantially for the reasons stated by the district court in its orders filed May 18, 1989 and June 16, 1989. The merits of the parties' positions are so clear as to justify summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). It is

FURTHER ORDERED that the request for sanctions under Fed. R. Civ. P. 38 be denied. While appellant's arguments on appeal are unpersuasive, they are not so utterly lacking in merit as to warrant the imposition of sanctions.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition

of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL CONSULTING SERVICES, INC.,	)
Plaintiff,	)
v.	) Civil Action
	) No. 88-0104
RICHARD K. GILBERT,	)
Defendant.	)

ORDER

This diversity case involves claims by the plaintiff for an alleged breach of a contract. In this order, the Court grants the defendant's motion to dismiss for failure to state a valid claim in excess of $10,000, as

required by 28 U.S.C. 1332(a), but denies his motion for an award of Rule 11 sanctions.

It is undisputed that the oral contract at issue here provided that the plaintiff would give advice with regard to certain lawsuits handled by the defendant, Mr. Gilbert, who is an attorney. If Mr. Gilbert won the case, the plaintiff would get a percentage of the award of attorney's fees; if Mr. Gilbert lost, the plaintiff would get nothing.

Count I of the complaint alleges that the plaintiff is owed approximately $14,000 in compensatory damages -- more than half of which is attributed to a case involving Mr. Roland Outlaw -- for fees owed to the plaintiff for six cases, as well as punitive damages in the amount of $100,000. Count II, pled in the alternative, alleges damages under quantum meruit

totaling $12,750 for work done on the cases, as well as a punitive damage claim for $100,000. Count III alleges "conversion of business property" -- the plaintiff claims that it has provided "intellectual work product" to Mr. Gilbert -- in excess of $100,000.[1]

The Court agrees with the defendant the plaintiff has not stated a valid claim for more than $10,000. In evaluating an amount in controversy, "the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283,

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[1] This claim appears to be another alternative restatement of the first two claims -- that Mr. Gilbert received information from the plaintiff and did not pay for it. Because the relationship between the two was a contractual one, however, this case is governed by the clear terms of the contract -- the plaintiff would receive a percentage of the attorney's fees in cases that Mr. Gilbert won -- not by quantum meruit or a theory of conversion.

288-89 (1938). The Court may rely on facts presented outside the pleadings in determining whether the amount in controversy is sufficient for federal court jurisdiction. See, e.g., Biefenthal v. Civil Aeronautics Board, 681 F.2d 1039 (5th Cir. 1982).

In the instant case, it is undisputed that Mr. Gilbert did not win and did not receive any attorney's fees from the Outlaw case. Thus, it is clear that the plaintiff can make no recovery with regard to efforts expended for this case, whether or not Mr. Gilbert terminated his relationship with the defendant before, during, or after the disposition of the Outlaw case. Because the terms of the contract can and must be enforced in this case, the Court cannot resort to the use of the concept of quantum meruit to determine the amount in controversy. The amount in controversy may

be determined precisely when the terms of the contract limit the plaintiff's recovery. See, e.g., Odell v. Humble Oil & Refining Co., 201 F.2d 123 (lOth Cir. 1953). In this case, the terms of the contract bar completely the plaintiff's recovery for work on the Roland Outlaw case. Removing the amount attributable to the Outlaw case from the plaintiff's complaint, plaintiff's claims clearly amount to less than $10,000.

In deciding whether a claim was made in "good faith," a court must apply an objective test. See, e.g., Jaconski v. Avisun Corp., 359 F.2d 931, 934 (3d Cir. 1966); 14A C. Wright, A. Miller, & E. Cooper, Federal Practice & Procedure 3702 (p. 55) (1977). Because the basic facts of the outcome of the Outlaw case must have been, or should have been, known to the plaintiff and its attorney, the Court concludes that the claim of

damages relating to the Outlaw case were not made in good faith.

Excluding the amounts requested for the Outlaw case from the plaintiff's complaint, the only way that the amount in controversy could exceed $10,000 is through the claim of punitive damages. A court must scrutinize closely a claim of punitive damages when it is used to satisfy the amount in controversy requirement, Kahal v. J.W. Wilson & Associates, Inc., 673 F.2d 547, 548 (D.C. Cir. 1982), and must not allow an unjustified claim of punitive damages to "shoehorn" a case into federal court. Id. at 549. Considering the undisputed facts presented to the Court, the Court believes that punitive damages clearly are not available in this case. Punitive damage awards in breach of contract cases are very rare in the District of Columbia. Id. at 548

("punitive damages are not recoverable in a contract action simply because defendant breached with a bad intent"). The Court believes that this case, like nearly all other contract cases, cannot give rise to punitive damages.

Accordingly, it is

ORDERED that the defendant's motion to dismiss is GRANTED and this case is DISMISSED without prejudice.

However, the Court also concludes that the actions of the plaintiff and its attorneys have not been egregious enough to justify the award of Rule 11 sanctions to the defendant.

Accordingly, it is

ORDERED that the defendant's motion for

Rule 11 sanctions is DENIED.

_____ _____

Date George H. Revercomb, Judge

Attorney for Plaintiff:
Jay L. Cohen
2000 L St., NW
Washington, DC 20036

Attorney for Defendant:
Richard K. Gilbert
307 "G" St., NW
Washington, DC 20001

UNITED STATE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term, 1989

No. 89-7170 C.A. No. 88-00104

International Consulting Services, Inc.,

v. Appellant

Richard K. Gilbert, Esquire

BEFORE: Ruth B.Ginsburg, Williams and Sentelle, Circuit Judges

ORDER

Upon consideration of Appellant's Petition for Rehearing, filed April 5, 1990, it is

ORDERED by the Court, that the Petition is denied

Per Curiam

(Appendix C-1)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL CONSULTING SERVICES, INC.,	)	
Plaintiff,	)	
v.	)	Civil Action
	)	No. 88-0104
RICHARD K. GILBERT,	)	
Defendant.	)	

ORDER

The plaintiff in this diversity case has moved to have the Court reconsider its dismissal of the case for lack of subject matter jurisdiction, based on failure to meet the $10,000 amount in controversy requirement of

28 U.S.C. 1332(a). The only ground for reconsideration is that there exists another case--Morris v. Brown, pending before the United States Court of Appeals for the District of Columbia Circuit -- on which the plaintiff now claims he did work for the defendant and because of which the plaintiff now claims he is owed money by the defendant. Even in the amended complaint of February 18, 1989, however, the plaintiff claimed only $4,575.54 for his work on the Morris case -- not enough to reach the $10,000 minimum, even if combined with the plaintiff's other viable claims. Moreover, pursuant to the contract between the parties, the plaintiff is not owed anything until the defendant has received attorney's fees for a case. It appears that the defendant has received nothing in attorney's fees for his work on the Morris case.

Thus, the plaintiff cannot make a claim for money that he says he would be entitled were the defendant to be awarded attorney's fees at some time in the future.

Accordingly, it is

ORDERED that the plaintiff's motion for reconsideration is DENIED.

_____ _____

Date George H. Revercomb, Judge

Attorney for Plaintiff:
Jay L. Cohen
2000 L St., NW
Washington, DC 20036

Attorney for Defendant:
Richard K. Gilbert
307 G St., NW
Washington, DC 20001

TEXT OF CONSTITUTIONAL AND STATUTORY PROVISIONS

Fifth Amendment, U.S. Constitution:

No person shall...be deprived of life, liberty or property, without due process of law.

Seventh Amendment, U.S. Constitution:

In Suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

28 U.S.C. 1332:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds

the sum or value of $10,000, exclusive of interest and costs, and is between

(1) citizens of different States;

(2) citizens of a State, and foreign states or citizens or subjects thereof; and

(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. ...

(Appendix E-2)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL CONSULTING
SERVICES INC.

Plaintiff

v. Case No. CA 88-104
(Revercomb, J.)

RICHARD K. GILBERT

Defendant

AMENDED COMPLAINT

COMES NOW the Plaintiff, INTERNATIONAL CONSULTING SERVICES, INC. (ICS), by and through counsel, MARC EMDEN, PA, and hereby files this claim against RICHARD K. GILBERT, ESQUIRE, Defendant, and for reasons therefore asserts the following:

BACKGROUND

1. Abraham Mazur is Vice President of ICS,

a business organized and incorporated under the laws of the State of Maryland, with its principal place of business in Maryland.

2. Defendant, RICHARD K. GILBERT, ESQUIRE, is a citizen of the District of Columbia.

3. Jurisdiction regarding all claims and issues raised in this complaint is conferred upon this Court by virtue of 28 U.S.C. sec. 1332 (a) (1), diversity jurisdiction.

4. This complaint involves a matter in controversy in which the sums claimed exceed ten thousand dollars ($10,000), exclusive of interest and costs.

5. Abraham Mazur is fifty percent shareholder of and vice-president for Plaintiff ICS. Mazur is an expert on social security disability claims.

6. Abraham Mazur received a J.D. degree by Georgetown University in 1954.

7. After retirement, Abraham Mazur, as principal for ICS, was engaged by various attorneys in the Washington metropolitan area to assist these attorneys in the presentation and litigation of various disability claims.

COUNT I
(Breach of Contract)

1. On or about November 1, 1983 Abraham Mazur, as agent of Plaintiff for ICS, contracted with the Defendant to provide the Defendant with legal support assistance in claims relating to Social Security disability claims; Victim of Crime Compensation Matters; Social Security Disability Claims; Civil Service Disability Retirement; Federal Employee Workman's Compensation; Medical Malpractice4.

2. Plaintiff's duties were, among others, to review any of the claims referred to in the preceeding

paragraph for merit, to research applicable laws, regulations and case law, to write pleadings and other legal memoranda in order to assist defendant's presentation of these claims before administrative and civil tribunals to secure awards and any other relief.

3. In consideration of Plaintiff ICS's legal expertise, Defendant agreed to pay Plaintiff fifty percent (50%) of all attorneys fees recovered on behalf of cases which the Plaintiff assisted. This fee was to be contingent upon the client prevailing at the hearing or trial level and upon the approval of payment of legal fees by the applicable tribunal.

4. Defendant agreed to act as the general supervisor of all work which he then designated to Plaintiff, ICS. This work frequently involved complex and challenging legal issues concerning a variety of Federal

Statutes such as the Federal Employees Compensation Act as it related to administrative bodies or Federal Agencies.

4. Plaintiff was treated Defendant Gilbert as an independent contractor who held out the Plaintiff to potential and actual clients to be defendant's paralegal assistant and consultant for various legal matters.

5. Defendant Gilbert, in recognition of Plaintiff's expertise and assistance in acknowledging the additional dimension of legal services the Defendant could then offer clients by virtue of his agreement with the Plaintiff, placed advertisements and other announcements boasting of Defendant's ability to handle disability matters.

6. On or about January 15, 1985 Plaintiff was preparing a brief on the matter of Roland Outlaw which was due to be filed with the Court of Appeals by no later

than January 22, 1985.

7. At noon on January 16, without warning, the Defendant fraudulently and with malice advanced the due date for completion of the Plaintiff's work on this brief to the 19th, hoping that Plaintiff would be unable to complete this mammoth project thus giving the Defendant a pretext to terminate the Plaintiff's services with the Defendant.

8. On January 16th, 1985 while Plaintiff attempted to comply with this unrealistic deadline, the Defendant advised the Plaintiff he now wanted the brief by 5 p.m. on January 17, 1985.

9. Defendant's ostensible reason for requesting the brief be done at further earlier date was that the Defendant had a trial to attend on Friday, January 18, and would thus need the brief in his hands prior to that

date in order to review it.

10. Defendant's actual reason for requesting the completion of the Outlaw brief on this further earlier date, however, was that Defendant knew that the Plaintiff could not in any stretch of the imagination complete the brief within the new alloted time, thus providing Defendant with a stronger pretext upon which to terminate the Plaintiff's services with Defendant.

11. The Defendant also continued to heap additional work upon the Plaintiff making it impossible to complete this Herculean project.

12. Plaintiff nevertheless submitted as much of the brief as he was able to complete to the Defendant at the close of business on January 17. This appeared to be satisfactory to the Defendant.

13. However, by telephone call on the evening of January 17, 1985, the Defendant informed Abraham Mazur, vice president for Plaintiff ICS, that ICS's services were no longer required. This termination was without just cause or reason and was based upon malicious intent to breach the contract and was not the result of any failure or performance on the part of the Plaintiff, ICS.

14. The wrongful and malicious termination by Defendant of this working agreement between the parties has resulted in and continues to result in failure to pay various and outstanding fees and compensation concerning work done by the Plaintiff for Defendant's cases. These services total more than fourteen thousand dollars ($14,000) as listed below (excluding expenses):

a. Ransom Webb	$	715.95
b. George Sweeney		250.00

c. Muriel Brewster	75.00
d. Edna Sykes-Smith	1,125.00
e. Roland Outlaw	7,421.06
f. James Morris	4,575.54
TOTAL	$ 14,162.55

15. Defendant's wrongful and premature termination of ICS from pending cases over which ICS had superior expert knowledge undermined the claim and thereby compromised ICS's claim against the defendant for recovery of its contingent legal fees.

16. Plaintiff ICS was always willing and able to perform all of the services required for the various disability and other cases as agreed between the parties.

17. The contract between the parties was a continuing one.

WHEREFORE, Plaintiff, ICS, pray damages against the Defendant in the amount of fourteen thousand nine hundred twenty seven dollars ($14,927.00) as compensatory damages plus interest and costs.

WHEREFORE, the Plaintiff prays this Court to award punitive damages against the Defendant, RICHARD K. GILBERT, in the amount of $100,000.00.

COUNT II

(Reasonable value of services, Quantum Meruit)

1. The facts and allegations described in Background and the paragraphs contained in Count I are here fully realleged and incorporated as if stated herein.

2. In the alternative, that as result of Defendant's malicious, willful and wrongful termination of his agreement with the Plaintiff has unjustly enriched the Defendant at the expenses of the Plaintiff ICS.

3. That the Defendant's continued retention of

various attorney's fees properly owed to the Plaintiff is inequitable and represents Defendant's unjust enrichment.

4. That since Plaintiff was deprived of its opportunity to continue to supervise legal matters over which it was an expert, it had no opportunity to insure that the client's claims would prevail and thereby to insure final approval of attorney's fees on matters which it had worked.

5. That Plaintiff is entitled to the reasonable value of its services to the Defendant of fifty dollars ($50.00) per hour, representing the sum deemed reasonable by the parties as follows:

a. Roland Outlaw	137 hours	@ $50 an hour $6,850.00
b. Ransom Webb	5 hours	@ $50 an hour $ 250.00
c. Ralph A. Ferraiulo	3 hours	@ $50 an hour $ 150.00

d. James Morris	90 hours	@ $50 an hour $4,500.00
e. Edna Sykes-Smith	20 hours	@ $50 an hour $1,000.00
T O T A L		$12,750.00

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount of twelve thousand seven hundred fifty dollars ($12,750.00) plus interest and costs.

WHEREFORE, Plaintiff demands judgment in the amount of one hundred thousand dollars ($100,000.00) as punitive damages.

COUNT III
(Conversion of business property)

1. The facts and allegations described in Background and Counts I and II above are fully realleged

and incorporated as if fully stated herein.

2. The work product, research, formulation of theories and approaches, written material, pleadings and other matters which were the sole intellectual work product of Plaintiff ICS in its rendering of services to Defendant Gilbert constituted the delivery of corporate property of Plaintiff ICS to Defendant Gilbert. This creative product has considerable proprietary value.

3. Defendant Gilbert was aware, or should have been aware in the exercise of reasonable care consistent with the standards of his profession, that upon termination of the services of ICS by Defendant on January 17, 1985, Defendant Gilbert was in the possesion of items of ICS corporate property related to the delivery of its research and writing services to Defendant.

4. On January 17, 1985, Abraham Mazur on behalf of ICS advised Defendant that he was no longer authorized to utilize in any way, shape, or form, the business property of ICS in the possession of the Defendant.

5. Nevertheless, Defendant used the business property of ICS, without authorization, permission, or consent, to his own use and enrichment, for his own benefit and purposes, and without compensation to ICS, thus converting ICS property to his own and using it as his own.

6. Plaintiff has reason to believe that Defendant has continued in the unauthorized use of the business property of ICS for his own benefit.

7. This unauthorized use by Defendant, if it has ocurred, has been without notice to ICS and without

compensation to it.

8. Plaintiff ICS has suffered considerable damage in the unauthorized and uncontrolled use of its business property by Defendant and is entitled to fair market value for the use of such property.

WHEREFORE, Plaintiff ICS prays a judgment against the Defendant, RICHARD K. GILBERT, in the amount of one hundred thousand dollars ($100,000.00) as compensatory damages plus interest, costs and attorney's fees.

MARC RICHARD EMDEN, P.A. #370604
51 Monroe Street, Suite 503
Rockville, MD 20850
Tel. (301) 762-3770

REQUEST FOR JURY TRIAL

Plaintiff ICS hereby requests a trial by jury on all issues raised herein.

MARC RICHARD EMDEN, P.A.

(Appendix F-16)

********** EXCERPTS **********

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INTERNATIONAL CONSULTING SERVICES, INC.	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action
	)	No.88-0104(GHR)
	)	
RICHARD K. GILBERT, ESQ.	)	
	)	
Defendant	)	

PLAINTIFF'S ANSWERS TO INTERROGATORIES

Plaintiff Corporation INTERNATIONAL CONSULTING SERVICES, INC., responds to the Interrogatories propounded by Defendant, as follows:

1. Please name the person or persons actually answering these interrogatories.

ANSWER - Abraham N. Mazur.

****

3. Please state the number of employees of Plaintiff

Corporation and indicate what percentage provide direct services to Plaintiff's clients or customers.

ANSWER - One (1) - Abraham N. Mazur (100%).

****

10. Please describe for each person named in Interrogatory 7 any employment, other than in Plaintiff's employ, of a legal nature to include the organization or institution, the dates and the location of the employment, the nature of the work performed, and the reasons for leaving.

ANSWER - Mr. Mazur began working for the Social Security Administration in 1948. He worked from that date until 1954 as a Claims Examiner in the Washington, D.C. (District) Office, interviewing claimants and performing initial level adjudications of Old Age and Survivors' Insurance Claims. From 1954 to 1956, he worked in the Birmingham, Alabama Payment (Regional) Center as a Claims Reviewer, approving, denying and/or developing further information on Old Age and Survivors' Insurance Claims. From 1956 to 1976, Plaintiff worked in the Social Security Administration (National) Headquarters in Woodlawn, Maryland, in the Bureau of Disability Operations. During this later time period Mr. Mazur was successively, a Disability Examiner, a Disability Reconsideration Examiner, and a Disability Legal Assistant.

In June 1976, Mr. Mazur suffered a severe heart attack and his wife, Marie Mazur, was told by the attending cardiologist that Mr. Mazur had less than five years to live. Mr. Mazur thereupon retired on disability by the United States Government.

****

12. If you contend that there was one contract governing the professional relationship between Defendant and Mr. Mazur, please state the following:

a. the date and location of the contract,
b. the persons actually making the contract,
c. whether the contract was reduced to writing, and
d. the terms of the contract, to include:
(1) the contract's duration,
(2) the compensation scheme,
(3) the services to be performed by Mr. Mazur, and
(4) the supervision to be provided by Defendant.

ANSWER: A verbal agreement was reached between the parties in December 1983 at 1000 Connecticut Avenue, NW, Washington, D.C. The contract was never formally reduced to writing but memoranda of its terms and conditions do exist. Specifically, there were two relevant "duration" dates under the contract. (1) The Plaintiff was to provide disability consulting services on all matters generated by Defendant's new yellow pages ad and other efforts at marketing this new specialty. Once a specific case was accepted, work under that case was to continue until its final legal adjudication. (2) Plaintiff's compensation was to be one-half of

all attorney's fees generated in the cases under which Plaintiff provided consulting services. Both Plaintiff's and Defendant's out-of-pocket expenses were to be paid before calculating this fee. (3) Plaintiff was to perform disability consulting services and legal support services requested by Defendant under these cases.

OBJECTION: Counsel objects to part (d)(4) of the Interrogatory. Plaintiff was an independent contractor, not an employee. Work product was "submitted" to Defendant. Work was not "supervised" by Defendant.

****

24. Please describe any work done by any employee of Plaintiff on the Ransom Webb case, to include the person or person who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - Plaintiff devoted five hours and 35 minutes to this case. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, and Mr. Mazur's home. A detailed description of the work performed follows:

10/15/84 Client Conference in Office.
Time 20 min.

10/15/84- 10/24/84	Review Client File including Medical Endorsements. Time 3 hrs.(approx)
10/24/84	Discuss Client File With Defendant. Time 45 min.
10/24/84	Client Conference in Office. Time 45 min.
12/14/84	Conference with Defendant in Office. Time 30 min.
12/18/84	Draft Letter re: Workman Compensation Issue. Time 15 min.

25. Please describe any work done by any employee of Plaintiff on the Muriel Brewster case, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries. A detailed description of the work follows:

12/20/83	Initial interview with Mrs. Brewster

and discussion of case.
Time 1 hour

10/26/84 Legal research.
Time 1 hour

10/31/84 Review of Case File at Office of Hearings and Appeals.
Time 1 hour

11/8/84 Office discussion with wage-earner and Gilbert.
Time 1 hour, 45 min.

11/13/84 Research.
Time 1 hour
Expenses: Photocopy - $0.05

11/14/84 Hearing at Office of Hearings and Appeals (present as consultant to Gilbert.
Time 40 minutes

26. Please describe any work done by any employee of Plaintiff on the Mary Sweeney case, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written product.

ANSWER - Plaintiff devoted six hours to this case. All work was performed by Mr. Mazur. Work was

performed at Defendant's office, Plaintiff's Office, and the Social Security District Office. A detailed description of the work performed follows:

8/16/84	Preparation of letter for Mary Sweeney to SSA District Office, Temple Hills, MD authorizing us to represent her and to transfer file to District Office at 21st and M Streets, N.W., Washington, D.C. Time 15 minutes
10/31/84	Review of files in SSA District Office. Time 45 minutes
11/5/84	Completed remainder of voluminous files at SSA District Office. Time 2 hours, 45 min.
11/9/84	Discussion of claims files with Claims Representative, Mr. Bradley. Time 1 hour
12/3/84	Conference with Mrs. Sweeney. Time 1 hour, 15 min.

27. Please describe any work done by any employee of Plaintiff on the Jane Morris case, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - Plaintiff directed 90 hours and spent $77.20 in reimbursable out-of-pocket expenses in this case. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries and as consultant to Mr. Gilbert at the hearing. A detailed description of the work performed follows:

8/13/84	Review claimant's personal Blue Book file.	
	Time	2 hours, 45 min.
8/20/84	Initial interview with claimant.	
	Time	30 minutes
9/19/84	Spoke to Celestine Waters (see her letter) asking for clarification of her letter, additional points, etc. (see my note); and Geraldine Johnson (principal at Cardozo High as new source of information re. Mrs. Morris).	
	Time	20 minutes
9/19/84	Mr. Holmes, phone call.	
	Time	25 minutes
9/19/84	Two calls to Mrs. Morris discussing various aspects of her case; also referred to Mr. Holmes.	
	Time	25 minutes

10/11/84 Inspected file at Office of Hearings & Appeals. Only file there was one Childhood Disability Claim filed 1/20/84. No SSI claim, and no previous childhood disability claims.

Time 2 hours

Expenses: Parking $2.75 for me
$2.75 for Mr. Gilbert

10/30/84 Phone conversation with Richard Gilbert, Esq.

Time 30 minutes

10/30/84 Preparing draft letters for Mr. Gilbert to mail out in final form.

Time 1 hour, 30 min.

11/7/84 Reviewed file at Office of Hearings & Appeals with Jane Morris, Washington, D.C.

Time 2 hours, 45 min.

12/4/84 After Mr. Gilbert left message that material was in "District Office, "went to ALJ's Office on 5th Street, N.W. Spoke to Ms. Green, determined that their AW File didn't have it. They called and found out that file was in Pennsylvania Avenue S.E. D/O--they are sending all material, including any previous folder(s) to ALJ office, 5th Street, N.W. Attn: Ms. Green,

and she will call Mr. Gilbert or me when it comes in.
Time 30 minutes

12/10/84 Reviewed file at Hearing Office, Washington, D.C.
Time 30 minutes

12/19/84 Review of file at Hearing Office, Washington, D.C.
Time 3 hours, 25 min.

Discussion with R. Gilbert, Esq.
Time 35 minutes
Expenses: Parking - $5.50

12/21/84 Review of Blue Book evidence.
Time 45 minutes

12/22/84 Review of Blue Book evidence.
Time 2 hours

12/24/84 Calls to D/O 21st & M Sts. (Mr. Bradley & Ms. Seal, at Hearing Office, & Ms. Mitchell at District Office at 202-755-5708 to locate Jane Morris's SSI file. Jane Morris' file charged to their S.E. office, but they can't locate it. They will search further at this S.E. District Office and check with the Hearing Office.
Time 1 hour, 15 min.

Review of Blue Book Medical evidence.

Time 1 hour, 30 minutes

12/25/87 Review of Blue Book Medical evidence.

Time 3 hours, 30 min.

12/26/87 Went to D.C., Dept. of Consumer & Regulatory Affairs, Corporation Division, 641 H Street, N.W. Washington, D.C. They have no record of Consultative Examinations Inc. Box numbers no good in DC--.

Time 20 minutes

12/26/84 Hearing Office, Washington, D.C., additional folders found.

Time 4 hours, 15 min.

Expenses: Parking - $5.50

12/27/84 Completed review of Blue Book evidence and notations.

Time 4 hours, 15 min.

12/28/84 Hearing Office, 5th Street, N.W., Washington, D.C.

Time 1 hour, 45 min.

S.S. D/O, 21st & M Sts., Washington, D.C.

Time 30 minutes

Expenses: Parking $4.50 (5th St.)

Parking $4.50 (Conn. & K)
Taxi $2.00

12/31/84 Review of file at Hearing Office, Washington, D.C.
Time 5 hours, 15 min.
Expenses: Parking - $5.50

1/2/85 Hearing Office, review of file, Washington, D.C.
Time 3 hours, 35 min.
Expenses: Parking - $5.50

1/4/85 Hearing Office, review of file, Washington, D.C.
Time 5 hours, 20 min.
Expenses: Parking - $5.50

1/5/85 Further review of additional medical evidence.
Time 1 hour, 50 min.

1/7/85 Checked status of Consultative Exams, Inc., with Maryland Dept. of Assessments & Taxation in Baltimore, MD. Discovered it is an Illinois corporation authorized to operate in Maryland beginning 6/29/84 (her exam was in 2/84); not necessary to have its Illinois charter on file in Maryland. Address in Illinois is Chicago post office box; then to

Enoch Pratt Library for medical research on Crohn's disease.
Time 3 hours, 30 min.

1/8/85 Call to Mr. Gilbert to discuss Morris case. She gave him two medical reference books.
Time 15 minutes

Spoke to Mrs. Morris; she will get copies of medical texts that we need for Monday's meeting. Final preparation of file of hearing.
Time 5 hours

1/9/85 Preparing file at Hearing Office, Washington, D.C.
Time 2 hours, 50 min.
Expenses: Parking - $5.50

Preparing file at District Office, 21st & M Streets.
Time 30 minutes
Expenses: Parking - $5.50

1/10/85 Preparing file at Hearing Office, Washington, D.C.
Time 1 hour, 30 min.
Expenses: Parking - $4.60

1/11/85 Preparing and reviewing evidence for hearing.
Time 7 hours, 30 min.

1/12/85 Preparing and reviewing evidence for hearing.
AM Time 2 hours, 30 min.

Then to Washington, D.C.
PM Time 2 hours, 45 min.
Expenses: Parking - $3.60

1/13/85 Conference with Mr. Gilbert & Mrs. Morris.
Time 3 hours

1/14/85 Preparing file and evidence for hearing.
AM Time 4 hours

Pratt Library.
Time 1 hour
Expenses: Parking - $3.00

Meeting with Mrs. Morris - Washington, D.C.
Time 3 hours
Expenses: Parking - $5.50

1/16/85 Formal hearing, Hearing Office, Washington, D.C.
Time 1 hour
Expenses: Parking - $5.50

28. Please describe any work done by any employee of Plaintiff on the Edna Sykes-Smith cases, to include the

person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - Plaintiff devoted 19 3/4 hours and spent $3.20 in out-of-pocket expenses on these cases. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries. A detailed description of the work performed follows:

Civil Service Disability Case

7/9/84 — After Mrs. Smith's initial inquiry, we called back and discussed her situation from a Civil Service Disability Retirement viewpoint.
Time 30 minutes

7/14/84 — Further phone discussion with Mrs. Smith concerning her disabilities from a Civil Service Disability Retirement viewpoint and marital situation.
Time 45 minutes

One office visit re: Civil Service.
Time 15 minutes

8/25/84 — Review of file from Civil Service

Disability viewpoint; medical evidence, leave records, etc.
Time 30 minutes

Research of law, cases, and CFR re: Civil Service Disability.
Time 2 hours, 30 min.

8/28/84 Visit to U.S. Civil Service Retirement Headquarters (OPM) at 1900 E. Street, N.W., Washington, D.C.
Time 30 minutes

10/4/84 2 draft letters (suggested) to Mr. Gilbert for Dr. Stanley Samms and Dr. L.E. Pierce.
Time 1 hour

10/5/84 Review of Civil Service Retirement material, forms necessary for Mrs. Smith's disability retirement, etc.
Time 45 minutes

10/8/84 Review leave request folder.
Time 30 minutes

Grievance Work Condition folder (with 13 flags).
Time 55 minutes

10/10/84 Review of draft application for retirement.
Time 30 minutes

FECA Case

7/9/84 — After initial inquiry by client, we called back and got many of the background details of her case. Medical background, U.S. Government agency (EEOC). People involved-leave status-work performance, etc. Told her to send in all file material she had.

Time 45 minutes

7/14/84 — Further phone discussion with Mrs. Smith concerning the background and details of her nervous (psychiatric condition).

Time 30 minutes

7/24/84 — After being unable to locate claimant at home to proceed further with claim, or at Rhonda Smith's or through her physician, Dr. Samms, we left message with her employer, EEOC, for her to contact us. We were informed she was not in attendance. Sent her letter on 7/24/84.

Time 1 hour, 15 min.

8/8/84 — Office visit - FECA.

Time 30 minutes

8/25/84 Review of file from FECA viewpoint, including new medical evidence.

Time 45 minutes

Research on law and CFR re: FECA.
Time 45 minutes

Review of collective bargaining agreement between EEOC and AFGE--re: status of employee and her situation.
Time 30 minutes

8/27/84 Visited U.S. Dept. of Labor--Office of Workmen's Compensation, Washington, D.C.
Time 20 minutes
Expenses: Parking - $3.00

8/28/84** Interviewed with Mrs. Smith who stated she is getting a current medical report from Dr. Samms and will drop it by here (office).
Time 30 minutes
**15 minutes for FECA and 15 minutes for Civil Service Disability.

9/2/84 Sent Gilbert a suggested draft letter for him to sign and send to the psychiatrist.

Time 30 minutes

9/30/84 Checked Dr. Black's credentials--he is a Board Certified psychiatrist in the Directory of Medical Specialists.

Time 5 minutes

10/2/84 Research of law, regulations, and suggested draft letter prepared for Mr. Gilbert to send to Mary T. Jones, Office of Worker's Compensation Programs (FECA) for them to issue an Administrative Subpoena to get the needed medical information and for Ms. Jones to send us photocopies of all material, including leave records, in their files.

Time 1 hour, 45 min.
Expenses: Photocopy $0.10
copy of regulations

10/4/84 Detailed review of medical evidence plus 2 draft letters (suggested), based on law, etc., to doctors Stanley Samms and L.E. Pierce.

Time 2 hours, 15 min.

10/8/84 Reviewed white folder--leave requests--attendance--part-time status (EEOC) and claimant memoranda plus medical evidence--made 3 flags in folder of key points.

Time 30 minutes

10/11/84 Per Mr. Gilbert's instructions, tried to get Mrs. Smith at work, hasn't been seen in several days--left message for Mr. Gilbert.

Time 10 minutes

Expenses: Photocopy - $0.10

29. Please describe any work done by any employee of Plaintiff on the Ralph Ferraiuolo cases, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written work product.

ANSWER - Plaintiff devoted 16 1/2 hours on these cases. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries. A detailed description of the work performed follows:

4/29/84-
4/30/84 Review of Medical Records and Research of Applicable Law, Regulations and case law.

Time 10 hours

5/14/84 Discussion of case with Gilbert.

Time 3 hours, 30 min.

5/22/84 Legal Research.
Time 2 hours, 10 min.

5/23/84 Legal Research.
Time 35 minutes

6/4/84 Memo to Defendant containing suggestions regarding case.
Time 15 minutes

30. Please describe any work done by any employee of Plaintiff on the Roland Outlaw case, to include the person or persons who performed the work, the dates, times, and places the work was performed, the specific nature of the work, to include the legal and factual questions involved, and whether such work resulted in a written product.

ANSWER- Plaintiff devoted 137 hours and spent $119 in out-of-pocket expenses on this case. All work was performed by Mr. Mazur. Work was performed at Defendant's office, Plaintiff's Office, Mr. Mazur's home and various libraries. A detailed description of the work follows:

8/3/84 U.S. Court House--examination of both case files C.A. No. 83-3886 and 81-0363.
Time 3 hours
Expenses: $5.50 parking

8/4/84 Baltimore County Law Library--Review of the law and pertinent

regulations.
Time 3 hours, 20 min.

8/10/84 University of Baltimore Law Library - research of cases and regulations.
Time 4 hours

8/11/84 Review of PL 97-455 (1/12/83) re: continued payment of disability benefits during appeal.
Time 30 minutes

8/12/84 (Sunday) - Further review of record and cases.
Time 1 hour, 15 min.

8/13/84 Further research.
Time 15 minutes

8/13/84 Call to Pratt Library re: legislative history of PL 97-455.
Time 15 minutes

8/14/84 Research and review of conference at U.S. Court House, U.S. Circuit Court of Appeals for D.C., and U.S. District Court for D.C.
Time 4 hours, 30 min.
Expenses: $5.50 parking

8/15/84 Research at Enoch Pratt Library on legislative history of PL 97-455.
Time 1 hour, 15 min.

8/16/84 Telephone discussion with Mr. Gilbert re. legislative history re: PL-97-455.
Time 15 minutes

8/18/84 Phone call to Enoch Pratt Library, Baltimore, MD, re. PL 98-118 and its legislative history; also preparation of statement for wage earner to present to SS D/O that he requests continued DIB and SSI payments due him on appeal under PL 97-455, PL 98-118, and a recent Supreme Court decision.
Time 45 minutes

8/19/84 Visit to University of Baltimore Law Library - research re. appellate procedure, admission of attorney, proper forms, etc.
Time 2 hours, 15 min.

8/27/84 Office of Clerk of Court, spoke to Mrs. Jordan who was able to straighten out and bring together papers for files on CA 83-3886 and 81-0363.
Time 1 hour
Expenses: Parking - $2.00

8/27/84 Waited for Mrs. Colchico (U.S. Court of Appeals) who was supposed to return momentarily, but did not.

Time 15 minutes

9/10/84 U.S. Court House - Preparation of brief.
Time 4 hours
Expenses: Parking - $5.50

9/12/84 Preparation of draft brief.
Time 3 hours, 45 min.

9/13/84 Preparation of draft brief.
Time 1 hour, 15 min.

9/14/84 Preparation of draft brief.
Time 1 hour, 30 min.

9/15/84 University of Baltimore Law Library - case research and preparation of brief.
Time 3 hours, 45 min.

9/17/84 Preparation of draft brief.
Time 3 hours, 45 min.

9/18/84 Preparation of draft brief.
Time 2 hours

9/19/84 Preparation of draft brief.
Time 1 hour, 15 min.
Expenses: Typing - $27.93
Photocopies - $1.80

9/20/84 Preparation of draft brief.

Time 2 hours, 15 min.

9/21/84 Review of draft brief.
Time 1 hour

9/21/84 Discussion of draft brief with Mr. Gilbert (morning phone call to home).
Time 30 minutes

9/26/84 Obtained Conference Report 98-1039.
Time 1 hour, 30 min.

Worked on constitutional issues, Matthew v. Eldridge.
Time 1 hour

9/28/84 Review of conference report of HR 3755 and research of case law.
Time 3 hours, 15 min.

9/29/84 Research case law considering 1984 amendments (conference report).
Time 1 hour

11/8/84 Legal research per additional suggestions of University of Baltimore.
Time 1 hour, 15 min.

11/10/84 Work on draft of brief.
Time 4 hours, 15 min.

11/11/84 Work on draft of brief.

Time 6 hours, 30 min.

11/12/84 Work on draft of brief.
Time 2 hours

11/14/84 Work on draft of brief.
Time 6 hours
Expenses: Typing - $21.00
Photocopies - $2.20

11/15/84 Work on draft of brief.
Time 4 hours

11/20/84 Work on draft of brief.
Time 4 hours

11/21/84 U.S. Court House, worked on 81-0363 but 83-3886 unavailable or lost or misfiled. Notified Mr. Gilbert and he will file motion on Friday 11/23/84 for continuance.
Time 2 hours, 30 min.
Expenses: Parking - $5.50

11/22/84 Writing draft brief.
Time 4 hours, 30 min.

11/23/84 Research at University of Baltimore Law Library.
Time 1 hour, 10 min.

Writing of final draft brief.
Time 4 hours, 45 min.

11/24/84 Writing of final draft brief.
Time 3 hours, 45 min.

11/25/84 Writing of final draft brief.
Time 5 hours, 15 min.

11/26/84 Work on final brief, round trip to Washington, D.C. office.
Time 2 hours, 45 min.
Expenses: Parking - $3.60

12/3/84 Review of file at Court House.
Time 3 hours
Expenses: Parking - $5.50

12/7/84 Review of file at U.S. Court House.
Time 3 hours, 15 min.
Expenses: Parking - $5.50

12/10/84 Review of file at U.S. Court House.
Time 3 hours, 30 min.
Expenses: Parking - $5.50

12/12/84 Review of file and consideration of news articles regarding new pertinent regulations.
Time 45 minutes

12/13/84 Rewriting of brief.
Time 2 hours, 30 min.

12/14/84 Conference at U.S. Court House with

Mr. Gilbert re: missing file.
Time 2 hours
Expenses: Parking - $5.50

12/16/84 Typing $36.75

1/8/85 Call to Mr. Gilbert re: new motion and medical report of 5/26/83 of Dr. Cook.
Time 15 minutes

1/14/85 Research at U.S. Court House (additional folder found).
Time 3 hours
Expenses: Parking - $5.50

1/15/85 Research at U.S. Court House.
Time 4 hours, 30 min.
Expenses: Parking - $5.50

Research Baltimore County Law Library.
Time 1 hour, 40 min.

1/17/85 Research at U.S. Court House.
Time 5 hours, 45 min.
Expenses: Parking - $5.50

Meeting at office, 5:00 PM, to hand Mr. Gilbert additional information.
Time 15 minutes

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41. Please list all compensation actually paid by Defendant to Mr. Mazur and the case to which it applied.

ANSWER - No compensation was paid by Defendant to Mr. Mazur. Defendant did pay the following amounts to Plaintiff:

(1) Yvonne Knight - $534.40.

(2) Edna Sykes-Smith - $375.00.

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47.State the facts upon which you rely in support of your contention that Defendant acted fraudulently and maliciously in requesting from Mr. Mazur an acceptable copy of a brief in the Roland Outlaw case by January 17, 1985.

ANSWER: Throughout the Fall and Winter of 1984 Defendant constantly expressed satisfaction with Plaintiff's work. Unknown to Plaintiff at the time, in December 1984 Defendant signed a contract for a second yellow pages ad. This ad omitted the line "Expert Consultant Available."

On December 24, 1984 Defendant told Plaintiff that he was happy with Plaintiff's work, but that he wanted to change the financial agreement between them beginning sometime in the Spring of 1985. He assured Plaintiff that all currently pending cases

would, of course, be in accordance with their 50-50 fee agreement.

These assurances were made in order to induce Plaintiff's faithful assistance during the critical months of December 1984 and January 1985 in four "large fee" cases, Sykes, Morris, Outlaw, and Webb. Plaintiff provided expert assistance in all four of these cases, helping prepare them as follows:

Sykes: Review and analysis of Case, development of expert testimony and preparation of case for application and hearing.
Morris: Review and analysis of Case, discussions with Morris and Gilbert, preparation for hearing held January 16, 1985.
Outlaw: Review and Analysis of Record, and development of legal arguments for brief.
Webb: Review and Analysis of Record, suggested testimony by Webb's attending physician at the Administrative Law Judge Hearing.

See also Answer to Interrogatory 48 supra.

48. State the facts upon which you rely in support of your contention that Plaintiff stated reason for requesting an acceptable copy of the brief in the Roland Outlaw Case by January 17, 1985 was pretextual.

ANSWER: Defendant had told Plaintiff that the brief in the Roland Outlaw case was due on January 22, 1985. Plaintiff and Defendant were

planning to meet in Defendant's office on January 21, 1985 in order to finish the brief together.

About a week or two before January 22, 1985, Defendant informed Plaintiff that they could not finish the brief on January 21, 1985, because the D.C. Law Library would be closed that day. Mr. Mazur pointed out that other area libraries would be open that day if additional research was necessary. However, Defendant was steadfast in his decision to finish the brief prior to that date, Defendant asked Plaintiff to finish his review, research, and preliminary drafts by noon on Saturday, January 19, 1985. Mr. Mazur agreed to do so, agreed to call Defendant at home when these items were ready, and agreed to work together with Defendant Saturday afternoon until the brief was finalized.

Notwithstanding this previously agreed to timetable, after the Morris hearing was completed on January 16, 1985, Defendant told Mr. Mazur (1) that he expected a "final brief" rather than Mr. Mazur's usual draft arguements and (2) that he needed this "final brief" by close of business the next day.

Mr. Mazur had never agreed to provide a "final brief" and had never done so previously in any other case. Indeed, the requirement of preparing a "final brief" in one day's time was obviously pretextual considering both the facts noted above and Defendant's hiring of Ms. Turrell, an attorney, in December, 1984 to assist on the brief.

See also Answers to Interrogatories 47 and 49.

49. Please identify the "additional work" you contend Defendant "heaped" upon Mr. Mazur, making it impossible for him to complete the brief in the Roland Outlaw case.

ANSWER: (1) To immediately review a newly discovered court folder, while at the same time instructed Ms. Turrell to review that same folder and to deny Plaintiff timely access thereto, and (2) to prepare a "final brief."

50. State the facts upon which you rely in support of your assertion that Defendant was satisfied with Mr. Mazur's work product in the Roland Outlaw case on January 17, 1985.

ANSWER: Defendant did not criticize Plaintiff's work product on January 17, 1985. To the contrary, Defendant asked Plaintiff to assist with a new client matter scheduled to commence on January 21, 1985.

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54. If you contend that Plaintiff or Mr. Mazur remained willing to perform legal support services for Defendant after January 17, 1985, please what you contend is the legal significance of the telegrams sent by Mr. Mazur on behalf of International Consulting Services, Inc., on January 17, 1985, in which Mr. Mazur forbade

Defendant to use any work product produced by him or International Consulting Services, Inc.

ANSWER: On January 17, 1985 Defendant breached said agreement. The legal significance of said telegrams was to preserve Plaintiff's rights and to mitigate damages in the face of this breach.

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